

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CYNTHIA J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 2:24-cv-00826-TL

ORDER REVERSING, IN PART,  
AND REMANDING THE  
COMMISSIONER’S FINAL  
DECISION

Plaintiff Cynthia J. seeks review of the denial of her application for Supplemental Security Income. This matter is before the Court on Plaintiff’s Complaint for Judicial Review of Social Security Benefits. Dkt. No. 10. Plaintiff contends the Administrative Law Judge (“ALJ”) erred by failing to provide specific, clear, and convincing reasons for rejecting Plaintiff’s subjective statements, and by rejecting the medical opinion of Dennis Haack, M.D. Dkt. No. 10 at 1. As discussed below, the Court REVERSES IN PART the Commissioner’s final decision and REMANDS the matter for further administrative proceedings under 42 U.S.C. § 405(g).

## I. BACKGROUND

Plaintiff is 54 years old (Dkt. No. 6<sup>1</sup> at 144 (Application Summary for Supplemental Security Income (Dec. 2, 2020))), has at least a high school education (*id.* at 187 (Form SSA-3368)), and has worked in retail and in non-profit organizations as a clothes sorter and holiday bell ringer (*id.*). On November 25, 2020, Plaintiff applied for supplemental security income, alleging disability as of May 5, 2016. *Id.* at 23 (Administrative Decision). Plaintiff's applications were denied initially and on reconsideration on August 27, 2021 and June 9, 2022, respectively. *Id.* After the ALJ conducted a telephonic hearing on June 27, 2023, the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 23–24.

Utilizing the five-step disability evaluation process,<sup>2</sup> the ALJ found:

**Step one:** Plaintiff has not engaged in substantial gainful activity since November 25, 2020. Dkt. No. 6 at 25 (Administrative Decision).

**Step two:** Plaintiff has the following severe impairments: carpal tunnel syndrome (“CTS”); knee degenerative joint disease; chronic obstructive pulmonary disease (“COPD”); fibromyalgia; sleep apnea; obesity; and status post stroke (20 C.F.R. § 416.920(c)). Dkt. No. 6 at 25.

**Step three:** These impairments do not meet or equal the requirements of a listed impairment.<sup>3</sup> Dkt. No. 6 at 26.

**Residual Functional Capacity:** Plaintiff can perform light work except that she can never climb ladders, ropes, or scaffolds. *Id.* at 28.

**Step four:** Plaintiff cannot perform past relevant work. *Id.* at 30.

**Step five:** As there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, Plaintiff is not disabled. *Id.* at 31.

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<sup>1</sup> Dkt. No. 6 is the Social Security Certified Administrative Record.

<sup>2</sup> See 20 C.F.R. §§ 404.1520, 416.920.

<sup>3</sup> See 20 C.F.R. § 404, subpt. P, app. 1.

1 The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the  
2 Commissioner's final decision. *Id.* at 5 (Notice of Appeals Council Action).<sup>4</sup>

## 3 II. LEGAL STANDARD

### 4 A. Standard of Review

5 This Court may set aside the Commissioner's denial of Social Security benefits only if  
6 the ALJ's decision was based on legal error or not supported by substantial evidence in the  
7 record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020); *see also Havens v. Kijakazi*, No. 21-  
8 35022, 2022 WL 2115109, at \*1 (9th Cir. June 13, 2022) (applying the standard and reversing  
9 ALJ's decision). The ALJ is responsible for evaluating evidence, in part by resolving conflicts in  
10 medical testimony and resolving any other ambiguities that might exist. *See Ford*, 950 F.3d at  
11 1149 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). When the evidence is  
12 susceptible to more than one interpretation, the ALJ's interpretation must be upheld if  
13 rational. *See id.* at 1154. The Court "must consider the entire record as a whole" and may not  
14 affirm the ALJ's decision "simply by isolating a specific quantum of supporting  
15 evidence." *Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th Cir. 2014) (quoting *Hill v. Astrue*, 698  
16 F.3d 1153, 1159 (9th Cir. 2012) (internal quotation marks omitted)). Finally, this Court "may not  
17 reverse an ALJ's decision on account of a harmless error." *Buck v. Berryhill*, 869 F.3d 1040,  
18 1048 (9th Cir. 2017) (citing *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012), *superseded*  
19 *on other grounds by* 20 C.F.R. § 404.1520c(c)(2)).

### 20 B. The "Disabled" Determination

21 The Social Security Act defines disability as the "inability to engage in any substantial  
22 gainful activity by reason of any medically determinable physical or mental impairment which  
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24 <sup>4</sup> The rest of the procedural history is not relevant to the outcome of the case and is therefore omitted.

1 can be expected to result in death or which has lasted or can be expected to last for a continuous  
2 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A); *see also Ford*, 950 F.3d at 1148  
3 (citations omitted).

4 To determine whether a claimant is disabled under the definition provided in the Social  
5 Security Act (and, thus, eligible for benefits), an ALJ follows a five-step sequential evaluation  
6 pursuant to 20 C.F.R. § 404.1520(a): (1) the claimant must not be engaged in “substantial gainful  
7 activity”; (2) the claimant’s impairment or combination of impairments must be severe enough to  
8 significantly limit the claimant’s “physical or mental ability to do basic work activities”; (3) the  
9 claimant’s impairment(s) must meet or equal the criteria of an impairment in the “Listing of  
10 Impairments” (“Listings”); (4) upon assessment of the claimant’s residual functional capacity  
11 (“RFC”), the claimant must not be able to perform their “past relevant work”; and (5) the  
12 claimant must not be able to make an adjustment to other work. *See Ford*, 950 F.3d at 1148–49.

13 If the claimant fails to make the required showing at any of these steps, the ALJ’s inquiry  
14 ends, and the claimant is found to not have a disability under the Social Security Act. The burden  
15 of proof is on the claimant at steps one through four, but at the fifth step, it shifts to the agency to  
16 prove that “the claimant can perform a significant number of other jobs in the national  
17 economy.” *Id.* at 1149 (citation omitted).

### 18 III. DISCUSSION

#### 19 A. Whether the ALJ Erred in Evaluating Plaintiff’s Symptom Testimony

20 Plaintiff first contends that the ALJ erred in evaluating her symptom testimony,  
21 specifically regarding her ability to walk unassisted, her emphysema, her knee condition, and her  
22 activities of daily living. Dkt. No. 10 at 2–4. These findings by the ALJ informed, and therefore  
23 affected, the determinations made at Steps 3 and 4 of the five-step sequential evaluation. *See*  
24 Dkt. No. 6 at 29–30 (Administrative Decision).

1 Where, as here, an ALJ determines that a claimant has presented objective medical  
2 evidence establishing underlying impairments that could cause the symptoms alleged (*see* Dkt.  
3 No. 6 at 29 (“After careful consideration of the evidence, the undersigned finds that the  
4 claimant’s medically determinable impairments could reasonably be expected to cause the  
5 alleged symptoms . . . .”)), and there is no evidence of malingering, the ALJ can only discount  
6 the claimant’s testimony as to symptom severity “by offering specific, clear and convincing  
7 reasons for doing so.” *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014). “The standard  
8 isn’t whether our court is convinced but, instead, whether the ALJ’s rationale is clear enough that  
9 it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

10 **1. Plaintiff’s Ability to Walk Unassisted**

11 At step 3, the ALJ found that Plaintiff did not meet listing 1.18 (abnormality of a major  
12 joint in any extremity) due to the lack of record of a medical need for a walker, and did not meet  
13 listing 11.14 (neuropathic condition causing disorganization of motor function) because “testing  
14 in the record showed unassisted walking and full strength.” Dkt. No. 6 at 26–27 (Administrative  
15 Decision). Plaintiff contends that the ALJ’s decision regarding her ability to walk unassisted  
16 misquotes the record by attributing the circumstances of Plaintiff’s examination, which was  
17 performed without assistive devices, to Plaintiff’s general ambulation. *See* Dkt. No. 10 at 2–3.  
18 Further, Plaintiff argues that the ALJ erred in associating Plaintiff’s ability to perform one-time  
19 movements in the examination setting with her perceived ability to perform sustained  
20 movements or activities. *Id.*

21 At her hearing, Plaintiff testified that she could not walk “more than a block without  
22 being in pain.” Dkt. No. 6 at 48 (Transcript of Oral Hearing). She testified further that she used a  
23 walker to ambulate (*id.*), and that she could only stand for approximately 20 minutes before  
24 needing to sit (*id.* at 44). The ALJ’s decision states: “The claimant testified to a prescribed

1 walker that [s]he requires to ambulate, as [s]he struggles walking more than a block (hearing  
2 testimony),” but the ALJ rejected that testimony because “testing in the record showed  
3 unassisted walking and full strength (Exhibit 3F/5-6).” Dkt. No. 6 at 28 (Administrative  
4 Decision). As a result, the ALJ found at step 4 that Plaintiff has the RFC to perform light work  
5 with certain exclusions. *Id.*

6 “Contradiction with the medical record is a sufficient basis for rejecting the claimant’s  
7 subjective testimony.” *Jesse B. v. Acting Comm’r of Soc. Sec.*, No. C24-5419, 2025 WL 586301,  
8 at \*4 (W.D. Wash. Feb. 24, 2025) (quoting *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d  
9 1155, 1161 (9th Cir. 2008)). However, “an ALJ may not reject a claimant’s subjective symptom  
10 testimony ‘solely on a lack of objective medical evidence to fully corroborate the alleged  
11 severity of pain,’” and “[t]reatment records may not be cherry-picked”—that is, “the ALJ must  
12 consider a particular record of treatment in light of the overall diagnostic record.” *Id.* (first  
13 quoting *Bunnell v. Sullivan*, 946 F.2d 341, 345 (9th Cir. 1991), then quoting *Ghanim*, 763 F.3d at  
14 1164). “An ALJ may discount a claimant’s testimony based on daily activities that either  
15 contradict their testimony or that meet the threshold for transferable work skills.” *Id.* at \*5 (citing  
16 *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007)).

17 The portion of the record cited by the ALJ when rejecting Plaintiff’s subjective testimony  
18 indicates that Plaintiff “is unable to walk on heels, can walk on toes, notes knee pain with  
19 hopping, and is able to perform a tandem gait maneuver. . . . The gait shows her favoring the  
20 right knee, a slightly disjointed gait with normal pace and stride.” Dkt. No. 6 at 459 (Exhibit No.  
21 3F). The functional assessment portion of the cited record also indicates that Plaintiff can, at  
22 maximum, stand or walk for “[l]ess than two hours” due to her “[d]egenerative joint findings,  
23 right knee, knee effusion, incomplete extension of the knee joint, and altered gait.” *Id.* at 461.

1 Further, the record indicates that as early as August 2022, Plaintiff had “difficulty walking and  
2 significant pain.” Dkt. No. 6 at 651 (Exhibit No. 8F).

3 The record—and in particular, the portion of the record cited by the ALJ—does not  
4 contradict Plaintiff’s subjective testimony. While the record states, and the ALJ acknowledged,  
5 that upon examination, Plaintiff “could not walk on her heels, but could walk on her toes, could  
6 walk unassisted, did not use an assistive device, had no difficulty sitting, could arise from seated  
7 to standing, could do a tandem gait, had full grip strength, and had full overall strength” (Dkt.  
8 No. 6 at 29 (Administrative Decision)), the ALJ’s decision does not explain how Plaintiff’s  
9 ability to perform those exercises in an examination setting contradicts her testimony regarding  
10 her ability to walk longer distances or her need to use a walker. Indeed, Dr. Haack’s report does  
11 not indicate how far Plaintiff was required to walk for his examination—and the fact that  
12 Plaintiff was able to walk an unknown distance without an assistive device does not, without  
13 more, contradict her subjective testimony (and Dr. Haack’s observation) that she generally needs  
14 a walker to ambulate and struggles to walk more than one block. Further, Dr. Haack’s report  
15 does not, as Defendant argues, opine that Plaintiff’s cane and knee brace are not necessary for  
16 “normal walking in everyday life.” Dkt. No. 14 at 7. Rather, his report states that those assistive  
17 devices are “medically necessary . . . for long distances and all distances with uneven terrain.”  
18 Dkt. No. 6 at 461 (Exhibit No. 3F).

19 The question now becomes whether the ALJ’s error in cherry-picking a single task from  
20 an exam to justify rejecting Plaintiff’s testimony regarding her ability to walk unassisted was  
21 harmless. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006). At the  
22 administrative hearing, the ALJ solicited the testimony of a vocational expert about the jobs  
23 available to an individual with Plaintiff’s limitations, posing a hypothetical that did not include  
24 Plaintiff’s testimony that she requires assistance to generally ambulate. *See generally* Dkt. No. 6

1 at 55–58 (Transcript of Oral Hearing). Not being informed of this limitation, the vocational  
2 expert did not have the opportunity to opine whether the characteristics of the jobs at issue would  
3 allow for such a limitation. “Any hypothetical posed to the vocational expert, for purposes of  
4 determining whether Plaintiff could perform other work, should have included all properly  
5 supported limitations because a ‘vocational expert’s opinion about a claimant’s residual  
6 functional capacity has no evidentiary value if the assumptions in the hypothetical are not  
7 supported by the record.’” *Trejo v. Comm’r of Soc. Sec.*, No. C22-192, 2023 WL 2752194, at \*4  
8 (E.D. Cal. Mar. 31, 2023) (quoting *Magallanes v. Bowen*, 881 F.2d 747, 756 (9th Cir. 1989)).  
9 Thus, because the Court cannot conclude that the ALJ’s error in rejecting Plaintiff’s testimony  
10 regarding her ability to walk unassisted was “inconsequential to the ultimate nondisability  
11 determination,” it does not find the error to be harmless. *Stout*, 454 F.3d at 1055.

12 Accordingly, the Court finds that the ALJ has not offered clear and convincing reasons  
13 for rejecting Plaintiff’s subjective testimony regarding her ability to walk unassisted, and the  
14 failure to do so constitutes harmful error.

## 15 **2. Plaintiff’s Emphysema**

16 Plaintiff next contends that the ALJ’s decision fails to adequately address her testimony  
17 regarding her emphysema. Dkt. No. 10 at 3. Plaintiff argues that the ALJ’s statement that “the  
18 record does not show hospitalizations for pulmonary conditions” is insufficient to evaluate  
19 Plaintiff’s emphysema, “a disabling impairment limiting her endurance to complete an 8-hour  
20 workday” that is “layered on top of her COPD” and causes fatigue. *Id.*

21 But Plaintiff does not point to any specific testimony that she contends that the ALJ  
22 rejected, and the ALJ did address more than Plaintiff’s lack of hospitalizations for her pulmonary  
23 conditions. For example, the Administrative Decision notes that “[p]ulmonary testing [in 2022]  
24



1 showed mild to moderate COPD, with a good response to a bronchodilator” (Dkt. No. 6 at 29  
2 (citing Dkt. No. 6 at 734 (Exhibit No. 9F))).

3 The record does indicate that Plaintiff’s COPD had likely advanced to “stage II” in early  
4 2023, as evidenced by “very expanded lungs.” Dkt. No. 6 at 799 (Exhibit No. 11F). However,  
5 Plaintiff was not prescribed any course of treatment at that time, and her medical records indicate  
6 that her ambulation was not significantly impacted by her COPD. *Id.* at 797 (“Patient was able to  
7 ambulate approximately 770 feet in 6 minutes, she did not have any desaturations or hypoxic  
8 events. She was minimally dyspneic at the end of the study.”). Further, Plaintiff testified that her  
9 inhaler controlled her symptoms for COPD and that she did not experience any other side effects.  
10 *Id.* at 46–47 (Transcript of Oral Hearing). “Impairments that can be controlled effectively with  
11 medication are not disabling for the purpose of determining eligibility for [social security  
12 disability] benefits.” *Susan F. v. Comm’r of Soc. Sec.*, No. C22-5661, 2023 WL 4704160, at \*3  
13 (W.D. Wash. July 24, 2023) (quoting *Warre ex rel. E.T. IV v. Comm’r, SSA*, 439 F.3d 1001,  
14 1006 (9th Cir. 2006)).

15 Finally, Plaintiff did not appear to testify at her administrative hearing to any limited  
16 endurance she suffered due to either COPD or her emphysema. *See generally* Dkt. No. 6 at 37–  
17 63. Plaintiff argues that her pulmonary conditions “result in excessive fatigue, which . . .  
18 preclude[] the ability to sustain effort,” but cites to no portion of the hearing or medical records  
19 supporting this argument, nor does she point to specific evidence that she claims the ALJ failed  
20 to consider. *See generally* Dkt. Nos. 10, 17. Because the evidence in the record is susceptible to  
21 more than one rational interpretation, “[the Court] must uphold the ALJ’s findings if they are  
22 supported by inferences reasonably drawn from the record.” *Susan F.*, 2023 WL 4704160, at \*4  
23 (citing *Molina*, 674 F.3d at 1111). The ALJ’s determination that Plaintiff’s emphysema was not a  
24

1 disabling condition because she was not hospitalized for any of her pulmonary conditions is a  
2 reasonable interpretation of the overall record.

3 Accordingly, the ALJ's decision as to Plaintiff's emphysema is supported by substantial  
4 evidence in the record.

### 5 **3. Plaintiff's Knee Condition**

6 Plaintiff also argues that the ALJ erred in basing her RFC "on an erroneous review of the  
7 medical record with respect to [Plaintiff's] knee condition." Dkt. No. 10 at 3. Plaintiff contends  
8 that the "ALJ erred in basing part of [her] decision on a finding that [Plaintiff's] knee pain could  
9 not be as severe as alleged based on [her] review of the evidence showing that [Plaintiff] never  
10 received steroid injection in the knee." *Id.* This is "factually inaccurate," Plaintiff argues,  
11 because Plaintiff did receive a steroid injection. *Id.* Further, Plaintiff argues that she need not  
12 prove the legitimacy of her pain by submitting to particular courses of treatment. *Id.*

13 At her hearing, Plaintiff testified that her knee condition limited her ability to ambulate,  
14 and that she could not walk "more than a block without being in pain." Dkt. No. 6 at 48  
15 (Transcript of Oral Hearing). The ALJ determined that Plaintiff had "conservative treatment for  
16 her . . . knee impairments that did not include surgery or injections," and that her testimony  
17 regarding her knee condition was thus contradicted by her medical record. Dkt. No. 6 at 29  
18 (Administrative Decision). The extent of the ALJ's evaluation of Plaintiff's knee condition  
19 appears to be that Plaintiff "only had a small fragment in the right knee," that in "June 2021  
20 physical therapy for her right knee, [she] showed full range of motion, full strength, and a small  
21 effusion," and her aforementioned finding regarding Plaintiff's conservative treatment. *Id.*

22 However, Plaintiff's medical record indicates that she *did* receive a steroid injection to  
23 treat her right knee pain in June 2021, which undercuts the ALJ's finding that Plaintiff only  
24 received "conservative" treatment for her knee condition. Dkt. No. 6 at 628 (Exhibit No. 8F); *see*

1 *Revels v. Berryhill*, 874 F.3d 648 (9th Cir. 2017) (“We have previously ‘doubt[ed] that epidural  
2 steroid shots to the neck and lower back qualify as “conservative” medical treatment.” (quoting  
3 *Garrison v. Colvin*, 759 F.3d 995, 1015 n.20 (9th Cir. 2014))). The ALJ’s statement that Plaintiff  
4 did not receive injections to her knee, and the subsequent finding that Plaintiff’s treatment was  
5 “conservative,” constitutes a clear error in the ALJ’s decision. However, “[a]n ALJ’s error may  
6 be deemed harmless if, in light of the other reasons supporting the overall finding, it can be  
7 concluded that the error did not ‘affect[] the ALJ’s conclusion.’” *Fox v. Colvin*, No. C16-1328,  
8 2017 WL 5495155, at \*6 (C.D. Cal. Nov. 15, 2017) (quoting *Batson v. Comm’r of Soc. Sec.*  
9 *Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)); *see also Stout*, 454 F.3d at 1054–55.

10 In January 2021, Plaintiff was diagnosed with “acute pain of right knee” and “pain with  
11 most movements” due to a “small fragment in the knee” causing swelling. Dkt. No. 6 at 305, 308  
12 (Exhibit No. 1F). At that time, Plaintiff’s diagnosing physician noted that the “soft tissue  
13 swelling [in Plaintiff’s knee] may be chronic,” but that Plaintiff declined to take prednisone due  
14 to the side effects. *Id.* at 307. Plaintiff was referred to a sports medicine physician, who  
15 diagnosed Plaintiff with “knee osteoarthritis, degenerative meniscal tear, decreased knee [range  
16 of motion (“ROM”)], pain and antalgic gait.” *Id.* at 315. Approximately five months later,  
17 Plaintiff’s sports medicine physician noted that she continued to experience knee pain and  
18 decreased knee ROM. *Id.* at 476 (Exhibit No. 6F). The physician stated that the June 2021  
19 steroid injection had been helpful to Plaintiff for several months, that Plaintiff did “some home  
20 exercises but did not go to [physical therapy],” and that Plaintiff’s pain was worse with stairs and  
21 “deep to patella and also medially.” *Id.* at 478.

22 At an unrelated appointment for hand and wrist pain later that same year, Plaintiff’s  
23 physician noted that Plaintiff continued to use a knee brace. *Id.* at 492. Plaintiff’s medical  
24 records indicate that she continued to experience knee pain in November 2021. *Id.* at 503.

1 However, at the Administrative Hearing, Plaintiff testified that her “knee got better” after  
2 physical therapy, though she did not testify as to the specific timing of the improvement of her  
3 knee pain or the degree of improvement. Dkt. No. 6 at 47 (Transcript of Oral Hearing).

4 Given that Plaintiff’s own reports of improvement in her knee pain undermine her  
5 testimony, and that Plaintiff’s medical records support a finding that Plaintiff’s knee pain  
6 improved with steroid injection treatment and physical therapy, the ALJ could reasonably reject  
7 Plaintiff’s testimony regarding her knee pain based on its inconsistency with the record. *See*  
8 *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) (“[E]vidence of medical treatment  
9 successfully relieving symptoms can undermine a claim of disability”); *Tommasetti v. Astrue*,  
10 533 F.3d 1035, 1041 (9th Cir. 2008) (finding it not improper to reject an opinion presenting  
11 inconsistencies between the opinion and the medical record).

12 Accordingly, while the Court certainly does not condone the ALJ’s error with regard to  
13 the finding that Plaintiff received conservative treatment for her knee condition, the ALJ’s  
14 decision as to Plaintiff’s knee condition is supported by substantial evidence in the record as  
15 outlined above.

#### 16 **4. Plaintiff’s Activities of Daily Living**

17 Plaintiff also argues that the ALJ erred by determining that Plaintiff’s activities of daily  
18 living were inconsistent with her allegations. Dkt. No. 10 at 4. Plaintiff contends that her  
19 “activities of daily living are very limited, and the ALJ fails to demonstrate that any of Plaintiff’s  
20 activities are completed at an intensity or duration which would be inconsistent with the  
21 Plaintiff’s allegations.” *Id.* at 5.

22 The ALJ’s decision states that Plaintiff’s ability to “perform activities of daily living, as  
23 the claimant reported she does yard work, cooking, laundry, cleaning, shopping, and all self-care  
24 tasks” is inconsistent with Plaintiff’s testimony regarding her medically determinable

1 impairments. Dkt. No. 6 at 29 (Administrative Decision). At her hearing, Plaintiff testified that  
2 she was able to perform a variety of household tasks, but was limited in her ability to do so by  
3 her need to take breaks to sit every five to 10 minutes. Dkt. No. 6 at 51 (Transcript of Oral  
4 Hearing).

5 Daily activities may be grounds for an adverse ruling “if a claimant is able to spend a  
6 substantial part of his day engaged in pursuits involving the performance of physical functions  
7 that are transferable to a work setting.” *Orn*, 495 F.3d at 639 (quoting *Fair v. Bowen*, 885 F.3d  
8 597, 603 (9th Cir. 1989), *superseded on other grounds by* 20 C.F.R. § 404.1502(a)). To discount  
9 Plaintiff’s subjective testimony regarding her physical limitations on the grounds that her daily  
10 activities contradict such testimony, the ALJ “must make ‘specific findings relating to the daily  
11 activities’ and their transferability.” *Id.* (citing *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.  
12 2005)).

13 Defendant argues that “even if Plaintiff’s activities were not consistent with full-time  
14 work, the salient point is that they were inconsistent with the severity of the symptoms [s]he  
15 alleged.” Dkt. No. 14 at 8. But the ALJ must make specific findings regarding these  
16 inconsistencies—and it is not clear from Plaintiff’s testimony how her daily activities, including  
17 her limitations in performing them, are inconsistent with the severity of symptoms she testified  
18 she experienced. The ALJ has not made the required findings with specificity here.

## 19 **5. Additional Arguments**

20 Plaintiff additionally argues that the ALJ erred in finding that Plaintiff’s limited work  
21 history prior to the onset date of her disability shows that factors other than severe impairments  
22 may have prevented Plaintiff from working. Dkt. No. 10 at 2. But an ALJ may consider a  
23 claimant’s lack of or limited work history when assessing subjective complaints. *See Thomas v.*  
24 *Barnhart*, 278 F.3d 947, 958–59 (9th Cir. 2002). While the ALJ did not discuss in the

Administrative Decision that Plaintiff specifically testified that her limited work history is because she was a “stay at home mom” (*see* Dkt. No. 6 at 43 (Transcript of Oral Hearing)), it was not error for the ALJ to consider Plaintiff’s work history when evaluating her subjective testimony regarding her impairments.

\* \* \*

Accordingly, the Court FINDS that the ALJ committed harmful error by rejecting Plaintiff’s subjective testimony regarding some of her impairments. In particular, the ALJ erred in finding that Plaintiff’s medical record, and the one, isolated test from her examination with Dr. Haack specifically, contradicted her testimony that she struggled to walk more than one block and needed to use mobility devices when walking. Further, the ALJ failed to make specific findings regarding any inconsistencies between Plaintiff’s performance of daily tasks and her subjective testimony regarding her impairments.

**B. Whether the ALJ Erred in Rejecting the Medical Opinion of Dennis Haack, M.D.**

Plaintiff also contends that the ALJ erred in rejecting the medical opinion of Dr. Dennis Haack. Dkt. No. 10 at 5.

**1. Consideration of Expert Medical Opinions**

“In disability benefits cases . . . physicians may render medical, clinical opinions, or they may render opinions on the ultimate issue of disability.” *Garrison*, 759 F.3d at 1012 (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)). “[T]here is not an inherent persuasiveness to evidence from [government consultants] over [a claimant’s] own medical source(s), and vice versa.” *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir. 2022) (alterations in original) (quoting Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844 (2017)). “‘The most important factors’ that the agency considers when evaluating the persuasiveness of medical opinions are ‘supportability’ and ‘consistency.’” *Id.* (quoting 20 C.F.R. § 404.1520c(a)).

1 “Supportability means the extent to which a medical source supports the medical opinion by  
 2 explaining the ‘relevant . . . objective medical evidence.’” *Id.* at 791–92 (quoting 20 C.F.R.  
 3 § 404.1520c(c)(1)). “Consistency means the extent to which a medical opinion is ‘consistent . . .  
 4 with the evidence from other medical sources and nonmedical sources in the claim.’” *Id.* at 792  
 5 (quoting 20 C.F.R. § 404.1520c(c)(2)).

6 With regard to the medical source’s relationship with the claimant, “an ALJ can . . .  
 7 consider the length and purpose of the treatment relationship, the frequency of examinations, the  
 8 kinds and extent of examinations that the medical source has performed or ordered from  
 9 specialists, and whether the medical source has examined the claimant or merely reviewed the  
 10 claimant’s records,” but does not need to make specific findings regarding these factors. *Id.*  
 11 (citing 20 C.F.R. § 404.1520c(c)(3)(i)–(v), (b)(2)). While an ALJ is not required to provide  
 12 “specific and legitimate reasons” for rejecting a treating or examining doctor’s opinion, it  
 13 “cannot reject an examining or treating doctor’s opinion as unsupported or inconsistent without  
 14 providing an explanation supported by substantial evidence.” *Id.* “The agency must ‘articulate . .  
 15 . how persuasive’ it finds ‘all of the medical opinions’ from each doctor or source . . . and  
 16 ‘explain how it considered the supportability and consistency factors’ in reaching these  
 17 findings.” *Id.* (quoting 20 C.F.R. § 404.1520c(b)) (cleaned up).

## 18 **2. The ALJ’s Consideration of Dr. Haack’s Opinion**

19 The ALJ’s decision stated:

20 Dr. Dennis Haack M.D. found the claimant could stand or walk  
 21 less than two hours, has no limitations sitting, uses a cane and knee  
 22 sleeve that is necessary for long distances, can lift up to 10 pounds,  
 23 can occasionally balance and stoop, can never perform other  
 24 postural activities, and needs to change positions frequently  
 (Exhibit 3F). This opinion is not persuasive, as it is not supported  
 by his own examination that showed full strength and unassisted  
 walking (Exhibit 3F/3-7). This opinion is inconsistent with the  
 claimant had [sic] conservative treatment for her CTS and knee

1           impairments that did not include surgery or injections (See Exhibit  
2           1F-13F). This opinion is inconsistent with new evidence in the  
3           record shows [sic] the claimant recovered well from her stroke  
4           (Exhibit 8F/5-30).

5           Dkt. No. 6 at 30 (Administrative Decision). But the ALJ's description of Dr. Haack's  
6           examination as showing "full strength and unassisted walking" understates the findings of that  
7           exam. In Dr. Haack's report, he states that upon examination:

8                     The claimant is unable to walk on heels, can walk on toes, notes  
9                     knee pain with hopping, and is able to perform a tandem gait  
10                    maneuver. No assistive devices are used during this portion of the  
11                    exam. The gait shows her favoring the right knee, a slightly  
12                    disjointed gait with normal pace and stride. [T]he claimant does  
13                    not attempt a squat maneuver secondary to knee pain, and is able  
14                    to bend forward at the waist to 70 degrees.

15           Dkt. No. 6 at 459 (Exhibit No. 3F). The ALJ relied on a single sentence to conclude that Plaintiff  
16           "showed full strength and unassisted walking" (Dkt. No. 6 at 30 (Administrative Decision))  
17           which merely noted that no assistive devices were used "*during this portion of the exam*" that  
18           involved four discrete tasks. *Id.* at 459 (emphasis added) (Exhibit No. 3F). Additionally, Dr.  
19           Haack's report indicates that upon Plaintiff's performance of a "straight leg raise test," he found  
20           that she had "joint deformity," including "degenerative changes in joint margins of the right knee  
21           . . . with approximately a fusion of about 10 degrees about the right knee." *Id.* These  
22           observations support Dr. Haack's findings that Plaintiff "could stand or walk less than two hours,  
23           has no limitations sitting, uses a cane and knee sleeve that is necessary for long distances, can lift  
24           up to 10 pounds, can occasionally balance and stoop, can never perform other postural activities,  
            and needs to change positions frequently," (*id.* at 461) and are not addressed by the ALJ in the  
            Administrative Decision.

            The ALJ's determination that Dr. Haack's conclusion is inconsistent with his own  
            examination of Plaintiff is not supported by substantial evidence, as discussed above. *See supra*



1 Section III.A.1. And the ALJ's determination that Dr. Haack's conclusion is inconsistent with  
2 Plaintiff's "conservative treatment" for her knee impairments omits that Plaintiff did receive a  
3 steroid injection for her knee issues. *See supra* Section III.A.3.

4 Accordingly, the ALJ's explanation for her rejection of the medical opinion of Dr. Haack  
5 is not supported by substantial evidence.

#### 6 IV. CONCLUSION

7 For the foregoing reasons, the Commissioner's final decision is REVERSED IN PART, and  
8 this case is REMANDED for further administrative proceedings consistent with this decision under  
9 42 U.S.C. § 405(g).

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11 Dated this 14th day of March 2025.

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Tana Lin  
14 United States District Judge  
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